



January 27, 2006

SENATE BILL No. 206

DIGEST OF SB 206 (Updated January 26, 2006 11:50 am - DI 96)

Citations Affected: IC 5-10; IC 36-8.

Synopsis: Public safety disability pensions. Creates a presumption that a police officer, firefighter, or emergency medical services provider who incurs a disability from certain cancers or a heart or lung disease while actively employed has incurred a disability in the line of duty. Allows a meeting or hearing held to rebut the presumption to be held as an executive session. Provides that a line of duty disability benefit retains the status of a disability benefit for the life of the disabled member.

Effective: July 1, 2006.

Drozda, Becker

January 9, 2006, read first time and referred to Committee on Pensions and Labor.
January 26, 2006, reported favorably — Do Pass.

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SB 206—LS 6649/DI 102+



January 27, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 206

A BILL FOR AN ACT to amend the Indiana Code concerning pensions.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-10-15 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2006]:

4 **Chapter 15. Emergency and Public Safety Employee Disability**
5 **From Certain Cancers or Heart or Lung Disease Presumed**
6 **Incurred in the Line of Duty**

7 **Sec. 1. As used in this chapter, "at risk for occupational**
8 **exposure" means that an individual incurs risk in performing the**
9 **basic duties of the individual's employment, including:**

10 (1) **providing emergency medical treatment in a nonhealth**
11 **care setting where there is a potential for contact with;**

12 (2) **working at the scene of an accident, a fire, or another**
13 **rescue or public safety operation, or working in an emergency**
14 **rescue vehicle or a public safety vehicle, during which the**
15 **individual has contact with;**

16 (3) **engaging in the pursuit, apprehension, and arrest of law**
17 **violators, during which the individual may be exposed to; or**

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(4) maintaining custody and physical restraint of prisoners or inmates of a prison, a jail, or another criminal detention facility, during which the individual may be exposed to; a known carcinogen or a substance or condition that adversely affects an individual's cardiovascular or respiratory system.

Sec. 2. As used in this chapter, "employee" means an individual who:

(1) is employed full time by the state or a political subdivision of the state as:

(A) a member of a fire department (as defined in IC 36-8-1-8);

(B) an emergency medical services provider (as defined in IC 16-41-10-1); or

(C) a member of a police department (as defined in IC 36-8-1-9);

(2) in the course of the individual's employment, is at risk for occupational exposure; and

(3) is not employed elsewhere by the state or a political subdivision of the state in a similar capacity.

Sec. 3. As used in this chapter, "exposure related cancer" refers to a cancer that is caused by a known carcinogen to which an individual is at risk for occupational exposure.

Sec. 4. As used in this chapter, "exposure related heart or lung disease" refers to a disease or impairment of the cardiovascular or respiratory system caused by a substance or condition to which an individual is at risk for occupational exposure.

Sec. 5. As used in this chapter, "known carcinogen" refers to a substance or agent the exposure to which is recognized by:

(1) the International Agency for Research on Cancer; or

(2) the National Institute for Occupational Safety and Health; as creating a high risk for the development of cancer.

Sec. 6. As used in this chapter, "political subdivision" has the meaning set forth in IC 6-3.5-2-1.

Sec. 7. As used in this chapter, "substance or condition that adversely affects an individual's cardiovascular or respiratory system" refers to a substance or condition the exposure to which is recognized by the National Institute for Occupational Safety and Health as creating a high risk for the development of heart or lung disease.

Sec. 8. (a) An employee or former employee who:

(1) is diagnosed with an exposure related cancer or exposure related heart or lung disease that:

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- 1 (A) requires medical treatment; or
 2 (B) results in total or partial disability; and
 3 (2) at the time of the diagnosis:
 4 (A) is actively employed; or
 5 (B) has terminated employment not more than sixty (60)
 6 months earlier;

7 is presumed to have a disability incurred in the line of duty.

8 (b) The presumption described in subsection (a) may be
 9 rebutted by competent evidence.

10 (c) A meeting or hearing held to rebut the presumption
 11 described in subsection (a) may be held as an executive session
 12 under IC 5-14-1.5-6.1(b)(1).

13 **Sec. 9. This chapter does not affect the requirements for**
 14 **determining eligibility for disability benefits provided by the state**
 15 **or a political subdivision of the state except to the extent of**
 16 **determining whether an employee incurred a disability in the line**
 17 **of duty.**

18 SECTION 2. IC 36-8-6-8 IS AMENDED TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2006]: Sec. 8. (a) For a member who became
 20 disabled before July 1, 2000, the 1925 fund shall be used to pay a
 21 pension in a sum determined by the local board, but not exceeding:

- 22 (1) for a disability or disease occurring before July 1, 1982, fifty
 23 percent (50%); and
 24 (2) for a disability or disease occurring after June 30, 1982,
 25 fifty-five percent (55%);

26 of the salary of a first class patrolman, to a member of the police
 27 department who has suffered or contracted a mental or physical disease
 28 or disability that renders the patrolman unable to perform the essential
 29 functions of any duty in the police department, considering reasonable
 30 accommodation to the extent required by the Americans with
 31 Disabilities Act. If a member who becomes eligible for a disability
 32 pension has more than twenty (20) years of service, the member is
 33 entitled to receive a disability pension equal to the pension the member
 34 would have received if the member had retired on the date of the
 35 disability.

36 (b) Except as otherwise provided in this subsection, for a member
 37 who becomes disabled after June 30, 2000, the 1925 fund shall be used
 38 to pay a pension in a sum determined by the local board, but not
 39 exceeding fifty-five percent (55%) of the salary of a first class
 40 patrolman, to a member of the police department who has suffered or
 41 contracted a mental or physical disease or disability:

- 42 (1) that is:

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(A) the direct result of:

- (i) a personal injury that occurs while the fund member is on duty;
- (ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer; or
- (iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

- (i) there is a connection between the conditions under which the fund member's duties are performed and the disease;
- (ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and
- (iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-15; and

(2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(c) Except as otherwise provided in this subsection, for a member who becomes disabled after June 30, 2000, the 1925 fund shall be used to pay a pension in a sum determined by the local board, but not exceeding fifty-five percent (55%) of the salary of a first class patrolman, to a member of the police department who has suffered or contracted a mental or physical disease or disability:

- (1) that is not described in subsection (b)(1); and
- (2) that renders the member unable to perform the essential functions of any duty in the police department, considering reasonable accommodation to the extent required by the

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Americans with Disabilities Act.

If a member who becomes eligible for a disability pension has more than twenty (20) years of service, the member is entitled to receive a disability pension equal to the pension the member would have received if the member had retired on the date of the disability.

(d) The member must have retired from active service after a physical examination by the police surgeon or another surgeon appointed by the local board. The disability must be determined solely by the local board after the examination and a hearing conducted under IC 36-8-8-12.7. A member shall be retained on active duty with full pay until the member is retired by the local board because of the disability.

(e) After a member has been retired upon pension, the local board may, at any time, require the retired member to again be examined by the police surgeon or another surgeon appointed by the local board. After the examination the local board shall conduct a hearing under IC 36-8-8-12.7 to determine whether the disability still exists and whether the retired member should remain on the pension roll. The retired member shall be retained on the pension roll until reinstated in the service of the police department, except in case of resignation. If after the examination and hearing the retired member is found to have recovered from the member's disability and to be again fit for active duty, then the member shall be put on active duty with full pay and from that time is no longer entitled to payments from the 1925 fund. If the member fails or refuses to return to active duty, the member waives all rights to further benefits from the 1925 fund.

(f) If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below:

(1) the amount of the first full monthly pension received by that person; or

(2) fifty-five percent (55%) of the salary of a first class patrolman; whichever is greater.

(g) Time spent receiving disability benefits is considered active service for the purpose of determining retirement benefits until the member has a total of twenty (20) years of service.

(h) A fund member who is receiving disability benefits under ~~this chapter subsection (a) or (c)~~ shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

(i) A fund member who is receiving disability benefits under subsection (b) is entitled to:

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- 1 **(1) receive a disability benefit for the remainder of the fund**
 2 **member's life; and**
 3 **(2) have the amount of the disability benefit computed under**
 4 **section 9 of this chapter when the fund member becomes**
 5 **fifty-five (55) years of age.**

6 SECTION 3. IC 36-8-7-11 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. (a) Benefits paid
 8 under this section are subject to section 2.5 of this chapter.

9 (b) If a member of the fire department becomes seventy (70) years
 10 of age or is found upon examination by a medical officer to be
 11 physically or mentally disabled and unable to perform the essential
 12 functions of the job, considering reasonable accommodation to the
 13 extent required by the Americans with Disabilities Act, so as to make
 14 necessary the person's retirement from all service with the department,
 15 the local board shall retire the person.

16 (c) The local board may retire a person for disability only after a
 17 hearing conducted under IC 36-8-8-12.7.

18 (d) If after the hearing the local board determines that a person who
 19 became disabled before July 1, 2000, is disabled and unable to perform
 20 the essential functions of the job, considering reasonable
 21 accommodation to the extent required by the Americans with
 22 Disabilities Act, the local board shall then authorize the monthly
 23 payment to the person from the 1937 fund of an amount equal to
 24 fifty-five percent (55%) of the salary of a fully paid first class
 25 firefighter in the unit at the time of the payment of the pension. All
 26 physical and mental examinations of members of the fire department
 27 shall be made on order of the local board by a medical officer
 28 designated by the local board.

29 (e) If after the hearing under this section and a recommendation
 30 under section 12.5 of this chapter, the 1977 fund advisory committee
 31 determines that a person who becomes disabled after June 30, 2000:

32 (1) has a disability that is:

33 (A) the direct result of:

- 34 (i) a personal injury that occurs while the fund member is on
 35 duty;
 36 (ii) a personal injury that occurs while the fund member is
 37 responding to an emergency or reported emergency for
 38 which the fund member is trained; or
 39 (iii) an occupational disease (as defined in IC 22-3-7-10),
 40 including a duty related disease that is also included within
 41 clause (B);

42 (B) a duty related disease (for purposes of this section, a "duty

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related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-15; and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

the local board shall then authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

(f) If after the hearing under this section and a recommendation under section 12.5 of this chapter, the 1977 fund advisory committee determines that a person who becomes disabled after June 30, 2000:

(1) has a disability that is not a disability described in subsection (e)(1); and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

the local board shall then authorize the monthly payment to the person from the 1937 fund of an amount equal to fifty-five percent (55%) of the salary of a fully paid first class firefighter in the unit at the time of the payment of the pension. All physical and mental examinations of members of the fire department shall be made on order of the local board by a medical officer designated by the local board.

SECTION 4. IC 36-8-7-12.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 12.1. (a) Benefits paid under this section are subject to section 2.5 of this chapter.

(b) A member who has been in service twenty (20) years, upon making a written application to the fire chief, may be retired from all

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1 service with the department without a medical examination or
 2 disability. Except as provided in subsection (f), the local board shall
 3 authorize the payment to the retired member of fifty percent (50%) of
 4 the salary of a fully paid first class firefighter of the unit at the time of
 5 the payment of the pension, plus:

6 (1) for a member who retires before January 1, 1986, two percent
 7 (2%) of that salary for each year of service; or

8 (2) for a member who retires after December 31, 1985, one
 9 percent (1%) of that salary for each six (6) months of service;
 10 over twenty (20) years. However, the pension in one (1) year may not
 11 exceed an amount greater than seventy-four percent (74%) of the salary
 12 of a fully paid first class firefighter.

13 (c) A member who is discharged from the fire department after
 14 having served at least twenty (20) years is entitled to receive the
 15 amount equal to the amount that the member would have received if
 16 the member retired voluntarily.

17 (d) All pensions in a class are on an equal basis. The local board
 18 may not depart from this chapter in authorizing the payment of
 19 pensions.

20 (e) The monthly pension payable to a member may not be reduced
 21 below the amount of the first full monthly pension received by that
 22 person.

23 (f) The monthly pension payable to a member who is transferred
 24 from disability to regular retirement status may not be reduced below
 25 fifty-five percent (55%) of the salary of a fully paid first class
 26 firefighter in the unit at the time of the payment of the pension.

27 (g) A benefit payable under this section shall be paid in not less than
 28 twelve (12) monthly installments.

29 (h) A fund member who is receiving disability benefits under
 30 **section 11(d) or 11(f) of this chapter** shall be transferred from
 31 disability to regular retirement status when the member becomes
 32 fifty-five (55) years of age.

33 **(i) A fund member who is receiving disability benefits under**
 34 **section 11(e) of this chapter is entitled to:**

35 **(1) receive a disability benefit for the remainder of the fund**
 36 **member's life; and**

37 **(2) have the amount of the disability benefit computed under**
 38 **section 11(e) of this chapter when the fund member becomes**
 39 **fifty-five (55) years of age.**

40 SECTION 5. IC 36-8-7.5-13 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13. (a) For a member
 42 who becomes disabled before July 1, 2000, the 1953 fund shall be used

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to pay a pension in an annual sum equal to:

(1) fifty percent (50%) for a disease or disability occurring before July 1, 1991; and

(2) fifty-five percent (55%) for a disease or disability occurring after June 30, 1991;

of the salary of a first class patrolman in the police department, computed and payable as prescribed by section 12(b) of this chapter, to an active member of the police department who has been in active service for more than one (1) year and who has suffered or contracted a mental or physical disease or disability that ~~render~~ renders the member permanently unfit for active duty in the police department, or to an active member of the police department who has been in active service for less than one (1) year who has suffered or received personal injury from violent external causes while in the actual discharge of the member's duties as a police officer. The pensions provided for in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department.

(b) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to fifty-five percent (55%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who:

(1) has suffered or incurred a disability that renders the member permanently unfit for active duty in the police department and that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

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(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-15; and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pensions provided for in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(c) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to fifty-five percent (55%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who has been in active service for at least one (1) year and:

(1) has suffered or incurred a disability that:

(A) renders the member permanently unfit for active duty in the police department; and

(B) is not described in subsection (b)(1); and

(2) is unable to perform the essential functions of the job, considering reasonable accommodation to the extent required by the Americans with Disabilities Act.

The pension provided in this subsection shall be paid only so long as the member of the police department remains unfit for active duty in the police department. If the salary of a first class patrolman is increased or decreased, the pension payable shall be proportionately increased or decreased. However, the monthly pension payable to a member or survivor may not be reduced below the amount of the first full monthly pension received by that person.

(d) For a member who became disabled before July 1, 2000, the 1953 fund shall be used to pay temporary benefits in an annual sum equal to thirty percent (30%) of the salary of a first class patrolman in the police department, computed and payable as prescribed by section

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12(a) of this chapter, to an active member of the police department who has been in active service for more than one (1) year and who has suffered any physical or mental disability that renders the member temporarily or permanently unable to perform ~~his~~ **the member's** duties as a member of the police department, or to an active member of the police department who has been in active service for less than one (1) year and who has suffered or received personal injury from violent external causes while in the actual discharge of the member's duties as a police officer, until the time the member is physically and mentally able to return to active service on the police department.

(e) For a member who becomes disabled after June 30, 2000, the 1953 fund shall be used to pay a pension in an annual sum equal to thirty percent (30%) of the salary of a first class patrolman in the police department, computed on an annual basis and payable in twelve (12) equal monthly installments, to an active member of the police department who:

(1) suffers or incurs a disability that renders the member temporarily unfit for active duty in the police department and that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B);

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's employment as the proximate cause); or

(C) a disability presumed incurred in the line of duty under

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1 IC 5-10-13 or IC 5-10-15; and
 2 (2) is unable to perform the essential functions of the job,
 3 considering reasonable accommodation to the extent required by
 4 the Americans with Disabilities Act.

5 The pension provided in this subsection shall be paid only so long as
 6 the member of the police department remains unfit for active duty in
 7 the police department. If the salary of a first class patrolman is
 8 increased or decreased, the pension payable shall be proportionately
 9 increased or decreased. However, the monthly pension payable to a
 10 member or survivor may not be reduced below the amount of the first
 11 full monthly pension received by that person.

12 (f) For a member who becomes disabled after June 30, 2000, the
 13 1953 fund shall be used to pay temporary benefits in an annual sum
 14 equal to thirty percent (30%) of the salary of a first class patrolman in
 15 the police department, computed on an annual basis and payable in
 16 twelve (12) equal monthly installments, to an active member of the
 17 police department:

- 18 (1) who has been in active service for at least one (1) year;
- 19 (2) suffers or incurs a disability that:
 - 20 (A) renders the member temporarily unfit for active duty in the
 - 21 police department; and
 - 22 (B) is not described in subsection (e)(1); and
- 23 (3) is unable to perform the essential functions of the job,
 24 considering reasonable accommodation to the extent required by
 25 the Americans with Disabilities Act.

26 The pension provided for in this subsection shall be paid only so long
 27 as the member of the police department remains unfit for active duty
 28 in the police department. If the salary of a first class patrolman is
 29 increased or decreased, the pension payable shall be proportionately
 30 increased or decreased. However, the monthly pension payable to a
 31 member or survivor may not be reduced below the amount of the first
 32 full monthly pension received by that person.

33 (g) If an application is made by an active member of the police
 34 department because of physical or mental disability for temporary
 35 benefits as provided in subsection (d), (e), or (f), the benefit is not
 36 payable until the local board determines after a hearing conducted
 37 under IC 36-8-8-12.7 that the member is unfit for active duty on the
 38 police department, considering reasonable accommodation to the
 39 extent required by the Americans with Disabilities Act. Before the
 40 hearing, a physician to be appointed by the local board shall examine
 41 the member and certify in writing whether in the physician's opinion
 42 the member is unfit, physically or mentally, for active duty in the police

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department. After the pension or benefit has been granted by the local board, the payment commences with the original date of the injury or illness causing the disability.

(h) A member who has been granted a disability benefit under this section and who fails or refuses to submit to a physical examination at any time by the local board physician has no right in the future to receive the disability benefit, and any benefit that has been granted shall be immediately canceled by the local board.

(i) The local board may, from time to time, require a member of the police department who is receiving at any time disability benefits or pensions as provided in this section to be examined by the physician appointed by the local board. After the examination, the local board shall conduct a hearing under IC 36-8-8-12.7 to determine whether the disability still exists and whether the member should continue to receive the pension or benefit. If after the examination and hearing the member is found to have recovered from the member's disability and is fit for active duty on the police department, then upon written notice to the member by the local board, the member shall be reinstated in active service, the safety board shall be informed of the action of the local board, and from that time the member is no longer entitled to payments from the 1953 fund. If the member fails or refuses to return to active duty after ordered by the local board, the member ceases to be a member of the 1953 fund and waives all rights to any further pensions or benefits provided by the 1953 fund.

(j) Notwithstanding any other provision of this chapter, no disability benefit may be paid for any disability based upon or caused by any mental or physical condition that a member had at the time the member entered or reentered the member's active service in the police department.

(k) If a member who is receiving disability benefits under subsection (a), (b), or (c) for a disease or disability occurring after June 30, 1991, is transferred from disability to regular retirement status, the member's monthly pension may not be reduced below fifty-five percent (55%) of the salary of a first class patrolman at the time of payment of the pension.

(l) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material compiled to determine the existence of a disability shall be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

(m) A fund member who is receiving disability benefits under ~~this chapter~~ **subsection (d) or (f)** shall be transferred from disability to

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regular retirement status when the member becomes fifty-five (55) years of age.

(n) A fund member who is receiving disability benefits under subsection (e) is entitled to:

(1) receive a disability benefit for the remainder of the fund member's life; and

(2) have the amount of the disability benefit computed under section 12 of this chapter when the fund member becomes fifty-five (55) years of age.

SECTION 6. IC 36-8-8-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 12. (a) Benefits paid under this section are subject to sections 2.5 and 2.6 of this chapter.

(b) If an active fund member has a covered impairment, as determined under sections 12.3 through 13.1 of this chapter, the member is entitled to receive the benefit prescribed by section 13.3 or 13.5 of this chapter. A member who has had a covered impairment and returns to active duty with the department shall not be treated as a new applicant seeking to become a member of the 1977 fund.

(c) If a retired fund member who has not yet reached the member's fifty-second birthday is found by the PERF board to be permanently or temporarily unable to perform all suitable work for which the member is or may be capable of becoming qualified, the member is entitled to receive during the disability the retirement benefit payments payable at fifty-two (52) years of age. During a reasonable period in which a disabled fund member is becoming qualified for suitable work, the member may continue to receive disability benefit payments. However, benefits payable for disability under this subsection are reduced by amounts for which the fund member is eligible from:

(1) a plan or policy of insurance providing benefits for loss of time because of disability;

(2) a plan, fund, or other arrangement to which the fund member's employer has contributed or for which the fund member's employer has made payroll deductions, including a group life policy providing installment payments for disability, a group annuity contract, or a pension or retirement annuity plan other than the fund established by this chapter;

(3) the federal Social Security Act (42 U.S.C. 401 et seq.), the Railroad Retirement Act (45 U.S.C. 231 et seq.), the United States Department of Veterans Affairs, or another federal, state, local, or other governmental agency;

(4) worker's compensation payable under IC 22-3; and

(5) a salary or wage, including overtime and bonus pay and extra

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or additional remuneration of any kind, the fund member receives or is entitled to receive from the member's employer.

For the purposes of this subsection, a retired fund member is considered eligible for benefits from subdivisions (1) through (5) whether or not the member has made application for the benefits.

(d) Notwithstanding any other law, a plan, policy of insurance, fund, or other arrangement:

(1) delivered, issued for delivery, amended, or renewed after April 9, 1979; and

(2) described in subsection (c)(1) or (c)(2);

may not provide for a reduction or alteration of benefits as a result of benefits for which a fund member may be eligible from the 1977 fund under subsection (c).

(e) Time spent receiving disability benefits is considered active service for the purpose of determining retirement benefits until the fund member has a total of twenty (20) years of service.

(f) A fund member who is receiving disability benefits:

(1) under **section 13.3(d) of this chapter; or**

(2) based on a determination under this chapter that the fund member has a Class 3 impairment;

shall be transferred from disability to regular retirement status when the member becomes fifty-five (55) years of age.

(g) A fund member who is receiving disability benefits:

(1) under section 13.3(c) of this chapter; or

(2) based on a determination under this chapter that the fund member has a Class 1 or Class 2 impairment;

is entitled to receive a disability benefit for the remainder of the fund member's life.

SECTION 7. IC 36-8-8-12.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 12.5. (a) This section applies only to a fund member who:

(1) is hired for the first time after December 31, 1989;

(2) chooses coverage by this section and section 13.5 of this chapter under section 12.4 of this chapter; or

(3) is described in section 12.3(c)(2) of this chapter.

(b) At the same hearing where the determination of whether the fund member has a covered impairment is made, the local board shall determine the following:

(1) Whether the fund member has a Class 1 impairment. A Class 1 impairment is a covered impairment that is the direct result of one (1) or more of the following:

(A) A personal injury that occurs while the fund member is on

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- 1 duty.
- 2 (B) A personal injury that occurs while the fund member is off
- 3 duty and is responding to:
- 4 (i) an offense or a reported offense, in the case of a police
- 5 officer; or
- 6 (ii) an emergency or reported emergency for which the fund
- 7 member is trained, in the case of a firefighter.
- 8 (C) An occupational disease (as defined in IC 22-3-7-10). A
- 9 covered impairment that is included within this clause and
- 10 subdivision (2) shall be considered a Class 1 impairment.
- 11 (D) A health condition caused by an exposure risk disease that
- 12 results in a presumption of disability or death incurred in the
- 13 line of duty under IC 5-10-13.
- 14 (2) Whether the fund member has a Class 2 impairment. A Class
- 15 2 impairment is a covered impairment that is:
- 16 (A) a duty related disease. A duty related disease means a
- 17 disease arising out of the fund member's employment. A
- 18 disease shall be considered to arise out of the fund member's
- 19 employment if it is apparent to the rational mind, upon
- 20 consideration of all of the circumstances, that:
- 21 ~~(A)~~ (i) there is a connection between the conditions under
- 22 which the fund member's duties are performed and the
- 23 disease;
- 24 ~~(B)~~ (ii) the disease can be seen to have followed as a natural
- 25 incident of the fund member's duties as a result of the
- 26 exposure occasioned by the nature of the fund member's
- 27 duties; and
- 28 ~~(C)~~ (iii) the disease can be traced to the fund member's
- 29 employment as the proximate cause; **or**
- 30 **(B) a health condition caused by:**
- 31 **(i) an exposure related heart or lung disease; or**
- 32 **(ii) an exposure related cancer;**
- 33 **that results in a presumption of disability incurred in the**
- 34 **line of duty under IC 5-10-15.**
- 35 (3) Whether the fund member has a Class 3 impairment. A Class
- 36 3 impairment is a covered impairment that is not a Class 1
- 37 impairment or a Class 2 impairment.
- 38 SECTION 8. IC 36-8-8-13.3 IS AMENDED TO READ AS
- 39 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13.3. (a) This section
- 40 applies only to a fund member who:
- 41 (1) is hired for the first time before January 1, 1990; and
- 42 (2) does not choose coverage by sections 12.5 and 13.5 of this

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chapter under section 12.4 of this chapter.

This section does not apply to a fund member described in section 12.3(c)(2) of this chapter.

(b) A fund member:

(1) who became disabled before July 1, 2000;

(2) is determined to have a covered impairment; and

(3) for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. If the disabled fund member does not have at least twenty (20) years of service or is not at least fifty-two (52) years of age, the benefit is computed and paid as if the fund member had twenty (20) years of service and was fifty-two (52) years of age.

(c) Except as otherwise provided in this subsection, a fund member:

(1) who becomes disabled after July 1, 2000;

(2) who is determined to have a covered impairment that is:

(A) the direct result of:

(i) a personal injury that occurs while the fund member is on duty;

(ii) a personal injury that occurs while the fund member is off duty and is responding to an offense or a reported offense, in the case of a police officer, or an emergency or reported emergency for which the fund member is trained, in the case of a firefighter; or

(iii) an occupational disease (as defined in IC 22-3-7-10), including a duty related disease that is also included within clause (B); or

(B) a duty related disease (for purposes of this section, a "duty related disease" means a disease arising out of the fund member's employment. A disease is considered to arise out of the fund member's employment if it is apparent to the rational mind, upon consideration of all of the circumstances, that:

(i) there is a connection between the conditions under which the fund member's duties are performed and the disease;

(ii) the disease can be seen to have followed as a natural incident of the fund member's duties as a result of the exposure occasioned by the nature of the fund member's duties; and

(iii) the disease can be traced to the fund member's

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employment as the proximate cause); ~~and or~~

(C) a disability presumed incurred in the line of duty under IC 5-10-13 or IC 5-10-15; and

(3) for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the Americans with Disabilities Act;

is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. If the disabled fund member does not have at least twenty (20) years of service or is not at least fifty-two (52) years of age, the benefit is computed and paid as if the fund member had twenty (20) years of service and was fifty-two (52) years of age.

(d) Except as otherwise provided in this subsection, a fund member:

(1) who becomes disabled after July 1, 2000;

(2) who is determined to have a covered impairment that is not a covered impairment described in subsection ~~(c)(2)(A)~~ or ~~(c)(2)(B)~~; **(c)(2)**; and

(3) for whom it is determined that there is no suitable and available work within the fund member's department, considering reasonable accommodation to the extent required by the federal Americans with Disabilities Act;

is entitled to receive during the disability a benefit equal to the benefit that the fund member would have received if the fund member had retired. If the disabled fund member does not have at least twenty (20) years of service or is not at least fifty-two (52) years of age, the benefit is computed and paid as if the fund member had twenty (20) years of service and was fifty-two (52) years of age.

(e) Notwithstanding section 12.3 of this chapter and any other provision of this section, a member who:

(1) has had a covered impairment;

(2) recovers and returns to active service with the department; and

(3) within two (2) years after returning to active service has an impairment that except for section 12.3 of this chapter would be a covered impairment;

is entitled to the benefit under this subsection if the impairment described in subdivision (3) results from the same condition or conditions (without an intervening circumstance) that caused the covered impairment described in subdivision (1). The member is entitled to receive the monthly disability benefit amount paid to the member at the time of the member's return to active service plus any adjustments under section 15 of this chapter that would have been

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1 applicable during the member's period of reemployment.

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SENATE MOTION

Madam President: I move that Senator Becker be added as coauthor of Senate Bill 206.

DROZDA

COMMITTEE REPORT

Madam President: The Senate Committee on Pensions and Labor, to which was referred Senate Bill No. 206, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 206 as introduced.)

HARRISON, Chairperson

Committee Vote: Yeas 9, Nays 0.

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